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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
06/848,690	04/08/86	WENIG	17864M

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EXAMINER	
ROBINSON,D	
ART UNIT	PAPER NUMBER
125	5

DATE MAILED: 04/21/87

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 1/22/87 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), ~~_____~~ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449
4. ☐ Notice of informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-24 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-24 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).

10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

Claims 1-24 are presented for examination.

The preliminary amendments of January 7, 1987 have been received and entered.

Claims 1, 9, and 17 are rejected under 35 U.S.C. 112, first paragraph, as the disclosure is enabling only for claims limited in accordance with pages 3-11 of the specification. See MPEP 706.03(n) and 706.03(z).

Specifically the following terminology is deemed to encompass a scope of subject matter which is broader than warranted or supported by the limited enabling disclosure presented: "thickening agent" (claims 1, 9, 17).

Claim 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-8, 11-17, and 19-24 are indefinite in failing to set forth proportions for all ingredients present therein.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 1-24 are rejected under 35 U.S.C. 103 over the combination of Deihl (B) and Shinton et al. (R) when taken in view of Bargigia et al. (A).

Both Deihl and Shinton et al. disclose the administration of vitamin B_{12} via a nasal aerosol composition as herein claimed. The references also teach the effectiveness of such an application. To include a thickening agent such as methyl cellulose in this composition would be readily obvious in view of the teaching of Bargigia et al. which discloses such a use for thickening agents as conventional. Note column 5, lines 43-46 as to cellulose type additives.

Applicant's compositions as well as the use thereof are deemed to fail to patentably differ from the state of the art as represented by the cited references.

Applicant's arguments submitted March 3, 1986 in Serial No. 723,844 have been carefully considered but are not deemed persuasive. The following comments are relative thereto.

All components of applicant's composition have been shown to be conventional excipients in this type of composition. This includes the aerosol administration of vitamin B_{12}. Applicant appears to argue that since the references do not disclose the actual composition, the claimed composition can not be obvious over the references. The references do disclose all components for use in this type of composition. Further the argument is given much less weight in view of the lack of specificity of the claims as to the ingredients.

The allegation of criticality of ingredients is noted but not supported on the record by any type of evidence. There is also no evidence of any result of an unexpected nature.

The claimed subject matter has been shown to be prima facie obvious over the cited art. Applicants has failed to overcome this prima facie case either by argument or evidence. The rejection is therefore adhered to.

The Chemical Abstracts reference (S) is cited to further show the state of the art.

No claims are allowed.

The current status of the parent application should be set forth on page 1 of the specification.

D.W.Robinson/pww
A/C 703
557-1752
4/10/87: Retyped 4/20/87

DOUGLAS W. ROBINSON
PRIMARY EXAMINER
ART UNIT 125